IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20217 of 2004

Between:

Godavari Chandrasekhar, S/o. Late G.V.S.S. Prasad,
R/o. D.No. 26-16-96/A, 1st Lane, Akulavarithota, Guntur -4.

..... PETITIONER

AND

1 **Chief General Manager, Telecom, Bharat Sanchar Nigam Limited, A.P. Circle, Hyderabad.**
2 **The General Manager, Telecom, Bharat Sanchar Nigam Limited, Guntur.**

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus to declare the letter No. TA/ST AR/12-638/2001 dt. 15-7-03 issued by the first respondent is illegal, arbitrary and in violation of Art.14 & 16 of Constitution of India and contrary to O.M.No. 14014/6/86-Estt(D) dt. 30-6-1987 as amended by O.M.No. 14014/20190-Estt.(D) dt. 9-12-93 and set aside the same and consequently direct the respondents to appoint the petitioner in Group-C post or Group 'D' post.

Counsel for the Petitioner:SMT.A.CHAYA DEVI

Counsel for the Respondents: MR.C.YADAGIRI

The Court at the admission stage made the following :

The Hon’ble Sri Justice

K.C. Bhanu

W.P. No. 20217 of 2004

O R D E R:

Challenging the proceedings in Lr.No.TA/ST/AR/12-638/2001 dated 15.7.2003 issued by the 1st respondent as illegal and arbitrary, the present writ petition is filed.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

The father of the petitioner died on 9.11.2000 while he was on duty. The petitioner is having a family consisting of mother, two sisters and one brother. The petitioner is the eldest son and his family was depending upon the salary received their late father and after the death of his father, the entire family is depending on the pension received by his mother. The petitioner's mother is suffering from ailments and most of the pension being received has to be spent on medical expenses. The petitioner is married and is having two family children. On 17.4.2001 the petitioner made an application for appointment on compassionate grounds. There upon the petitioner received a rejection letter dated 15.7.2003 issued by the 1st respondent stating that the request of the petitioner for appointment on compassionate grounds for Group-D post is rejected. According to the petitioner, the said rejection is without assigning any reasons and it is a non-speaking order. As per the proceedings dated 30.6.1987 and 9.12.1993 of the Government of India, the petitioner is entitled to compassionate appointment for Group-C and Group-D posts. Therefore, the petitioner filed O.A. 908 of 2003 before the Central Adminsitrative Tribunal seeking to suspend the impugned proceedings dated 15.7.2003 issued by the 1st respondent. Thereafter, the High Power Committee which met on 3.6.2003 examined the case of the petitioner and rejected the claim of the

petitioner. The petitioner states that even though one Samudrala Dhanalakshmi received an amount of Rs.4,35,000/- without LIC & Postal Life Insurance and is receiving Rs.4,050/- per month towards pension, she was given appointment on compassionate grounds. So also, M.Venkatamma, B.Sunil Kumar, P. Jagan Mohan Rao and V.Lopamudra were appointed on compassionate grounds and that the case of the petitioner stands on par with the abovementioned employees. It is also stated that initially the case of one Y. Vijayalakshmi was rejected but again her case was reviewed and appointment was given on 17.12.2003. The O.A. filed by the petitioner was dismissed on the ground of jurisdiction. Hence the present writ petition.

The respondents filed counter affidavit admitting the employment of the petitioner's father and also that the deceased survived with his wife, two major sons and two daughters. The High Power Committee met on 3.6.2003 has examined the case of the petitioner thoroughly with reference to the service rendered by the deceased person, family pension and taking into account the family pension, terminal benefits, size of the family etc. rejected the case of the petitioner. As per the proceedings of the department dated 16.2.1999, while considering the request for appointment on compassionate grounds a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family. The sons and daughters of the deceased employee are all majors and well educated and they are not depending on the mother's income. With regard to the other cases on compassionate grounds, it is stated in the counter that their cases have been considered as per the merits of the individual cases. Therefore, it is stated, the petitioner cannot say that his case was discriminated. Hence, the respondents pray to dismiss the writ petition.

Learned counsel for the petitioner Smt. A. Chayadevi

contended that at the time of death of the deceased all the petitioners were depending on him and the pension is hardly sufficient to meet the medical expenses of the wife of the deceased; that similarly situated persons were considered by the department in giving appointments on compassionate grounds; that the order under challenge does not indicate the reasons for rejecting the case of the petitioner and therefore it is a non-speaking order. She further contended that the Assistant Director also recommended for appointment of the petitioner. Hence, she prays to reconsider the appointment of the petitioner taking into account the rules governing the appointment on compassionate grounds.

On the other hand, learned counsel for the respondents contended that each case has to be decided on its individual relative merits and giving of appointments to some other persons cannot be taken as a basis for claiming appointment of the petitioner on compassionate grounds; that considering all the aspects the impugned proceedings have been passed and therefore the order under challenge does not suffer from any legal infirmities so as to call for interference of this Court.

With regard to appointment of a person of the deceased employee on compassionate grounds, certain instructions have been issued by the G.I. Department in O.M.No.14014/6/86-Estt. (D) dated 30th June 1987 as amended by O.M. No. 14014/20190-Estt. (D) dated 9th December 1993. Clause 4(e) of the said instructions reads as follows:

> "In deserving cases even where there is an earning member in the family, a widow/son/daughter of the deceased Government servant, leaving his family in distress may be considered for appointment with the prior approval of the Secretary of the Department concerned who, before approving the appointment, will satisfy himself that the grant of concession is justified having regard to the number of dependents, the assets and the liabilities left

> by the deceased Government servant, the income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the deceased Government servant and whether he should not be a source of support to the other members of the family".

The above para makes it clear that the respondents have to take note of the number of dependents, assets and liabilities left by the deceased Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the deceased Government servant and whether he should not be a source of support to the other members of the family.

The impugned proceedings dated 15.7.2003 reads as follows:

> "Please refer to your request for appointment on compassionate grounds in relaxation of recruitment rules for Group-D posts. The case has been examined by the High Power Committee, which met on 3.6.2003 with regard to terminal benefits, the property, the liability and the size of the family. I am directed to intimate that it has been decided to REJECT the request for appointment in relaxation of recruitment rules in this case".

Though the above proceedings shows that the High Power Committee which met on 2.6.2003 has taken note of terminal benefits, property, liability and size of the family, but it does not indicate the benefits that have been received by the wife of the deceased, whether the petitioner or any one of the family members of the deceased employee are having any properties and the nature of the liabilities. Therefore, it does not contain any reasons of whatsoever. As per the scheme of compassionate appointment, the application for compassionate appointment should, however, not be

rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities including the benefits received under the various welfare schemes mentioned above and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family etc.

The GMTD, Guntur recommended for appointment of the petitioner on compassionate grounds. It is admitted fact that the mother of the petitioner is receiving Rs.5,184/- per month towards pension. A total amount of Rs.4,98,280/- has been received by the wife of the petitioner. As seen from the impugned proceedings, there is no balanced and objective assessment of the financial condition of the petitioner's family. So also, it does not indicate the assets and liabilities of the petitioner. In the following cases, admittedly some appointments were made on compassionate grounds. They are:

> "i) Samudrala Dhanalakshmi w/o Late Thomas, her husband was died on 3.3.2002. After the death of her husband she received an amount of Rs.4,35,000/- without LIC & Postal Life Insurance & receiving Rs.4,050/- per month towards pension, she got compassionate appointment and she is working at Annapurna Complex, Laxmipuram, Guntur.
>
> ii) Smt. Murgula Venkatamma w/o Late Laxminarayana, her husband was expired on 3.9.2000, after death of her husband she received an amount of Rs.3,16,475/- she is getting Rs.3,837/- p.m. towards pension & she is having own house worth at Rs.1,00,000/- though the respondents gave a compassionate appointment to her and now she is working in Group-D post,

Narasarraopet, Guntur District.

iii) Boddu Sunil Kumar s/o Late B. Subba Rao, his father was died on 13.9.1997 and his family received notional benefits amount of Rs.3,31,764/- out of that they showed the liabilities Rs.1,50,000/- his mother receiving pension Rs.3,757/- p.m. The respondent gave a compassionate appointment to him and now he is working at Commercial Section Office of General Manager, BSNL, Guntur.

iv) Pojala Jagan Moha Rao s/o P. Venkateshwara Rao, his father died on 18.4.1998 after death of his father they received an amount of Rs.3,38,823/- and his mother was receiving Rs.3,770/- p.m. towards pension. The respondent gave compassionate appointment to him and now he is working as A.O. Pay & Claims second land, Laxmipuram, Guntur.

v) V.Lopamudra d/o Late Ramakoteshwar Rao, her father died on 7.9.1997 after her father's death their family received retirement benefits of Rs.4,28,276/- and they showed their liabilities at Rs.3,50,000/- and her mother is receiving Rs.3,857/- p.m. towards pension, she got appointment on 27.12.2000 vide employment No.7095 on compassionate appointment in the respondent's department".

Further, in the case of one Y. Vijayalakshmi, though her application was rejected along with the petitioner's application for compassionate appointment on 15.7.2003, she was given appointment by reviewing the same.

So, from the appointments made as stated above, the case of the petitioner is discriminated. The order under challenge does not contain the reasons at all and it is not in accordance with the scheme framed by the respondents.

Therefore, the impugned proceedings dated 15.7.2003 are set aside and the matter is remitted to the respondents for re-consideration of appointment to the petitioner in any suitable post in accordance with the scheme framed by the respondents.

The writ petition is accordingly disposed of. No costs.

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K.C. Bhanu, J.

Date: --12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 **Chief General Manager, Telecom, Bharat Sanchar Nigam Limited, A.P. Circle, Hyderabad.**
2 **The General Manager, Telecom, Bharat Sanchar Nigam Limited, Guntur.**

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